

SPEECH

DELIVERED BY
JOHN L. MORRIS, ESQ.

COUNSEL FOR THE
**Board for the Management of the Temporalities Fund
of the Presbyterian Church of Canada, in con-
nection with the Church of Scotland,**

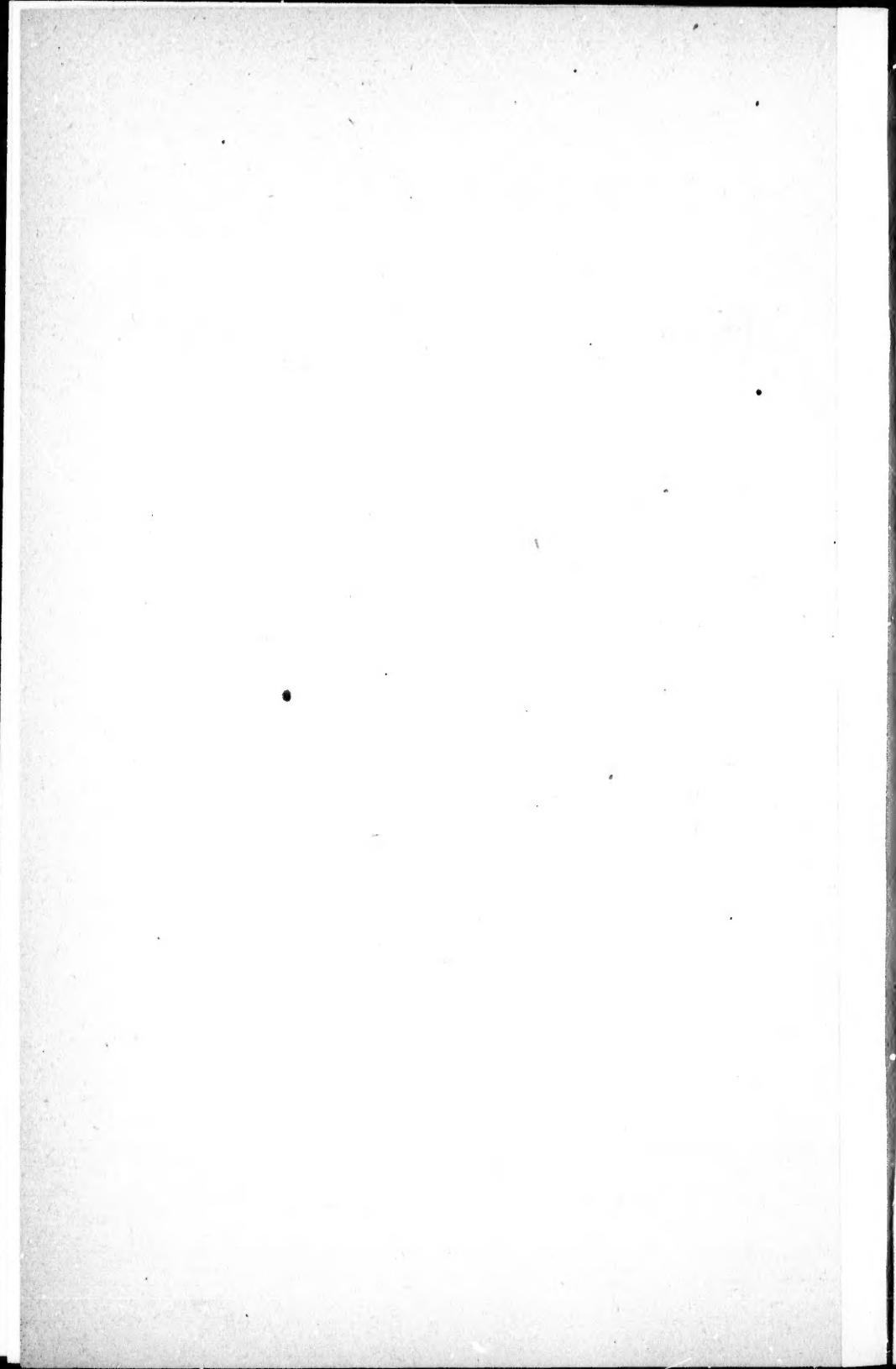
BEFORE THE
PRIVATE BILLS COMMITTEE OF THE SENATE,

AT OTTAWA, APRIL 24th, 1882,

WITH REFERENCE TO
THE TEMPORALITIES FUND BILL.

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Counsel for the Temporalities Board,

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APRIL 24th, 1882,

On consideration of Bill No. 66, "An Act to amend the Act intituled 'An Act to incorporate the Board for the Management of the Temporalities Fund of the Presbyterian Church of Canada in connection with the Church of Scotland' and the Acts amending the same."

The Committee met at 10 A.M..

The Chairman (Hon. Mr. Bellerose) called upon Mr. Morris, Counsel for the Temporalities Board and for the Presbyterian Church in Canada, to address the Committee in favor of the Bill.

Mr. MORRIS—Mr. Chairman, I do not intend to-day to do more than review briefly the facts of this case, as I believe that you only wish to get at the truth in order to render your decision upon this very important question.

I have here a record in appeal in the case of Dobie *vs.* the Temporalities Board, which was decided by the Privy

Council in England, with all the sworn testimony, so that I shall not merely assert, but will prove my statements as I proceed.

I will first refer to the origin of the "Presbyterian Church of Canada in connection with the Church of Scotland," to which the Temporalities Fund now in dispute belongs. This Church was formed in the year 1831, at the suggestion of Sir George Arthur, in his despatch to Lieutenant-Governor Sir John Colborne of the 1st August, 1830, and the object suggested by him was the union of all Presbyterians in the Province of Canada. So that the foundation principle—the rock on which the Church was founded—was Union; and what was right in those early days cannot be wrong now as regards the larger union, which took place in 1875. The union of 1831 was in order that all Presbyterians scattered throughout the Provinces might more readily communicate with the Government concerning the Clergy Reserves. That was a good object. The union of 1875 was also for a good object. It was to enable the different churches to unite their forces, and thus promote their common aim, namely: The promulgation of religion according to Presbyterian doctrine and customs. I now quote the words of Sir George Arthur:

"It appears to me very desirable, if such a measure could be accomplished, that the whole of the Presbyterian Clergy of the Province should form a Presbytery or Synod, and that each Presbyterian minister who is to receive an allowance from Government should be recommended by that body. By this arrangement the whole of the Presbyterian Clergy of Upper Canada would be placed upon the same footing with respect to the assistance afforded by Government towards their support."

This suggestion was carried out, and the Church was formed on the 7th of June, 1831, at a convention of ministers and commissioners from the different congregations. These ministers and commissioners called it "The Pres-

byterian Church of Canada in connection with the Church of Scotland." It was a voluntary and independent association from the beginning. It was not a body corporate, and was not connected with the Church of Scotland in Scotland by any substantial connection. I will prove this by the declaration of the Church of Scotland itself. It is absolutely necessary that you should know exactly the relations which existed between this Church and the Church of Scotland in Scotland, because the words in the name—"In connection with the Church of Scotland"—have misled a great many who do not understand the question.

Now, here is a letter written from the Church of Scotland in Scotland, to this Church in Canada, appearing in its minutes in the year 1844, in which the Church of Scotland states :

"The Church of Scotland has never claimed any authority nor exercised any control over your Synod; neither has she ever possessed or desired to possess the right of any such interference. Her efforts have been limited to the cultivation of brotherly affection and the rendering of pecuniary aid to those who had many claims on her regard."

This is the declaration of the Church of Scotland herself, who states that her relations were limited to the cultivation of brotherly affection and the rendering of pecuniary aid. She never exercised nor claimed to exercise any control. That is the whole meaning of the connection with the Church of Scotland—a connection simply of identity of origin and standards and ministerial and church communion. The Presbyterian Church of Canada in connection with the Church of Scotland was at that time composed principally of ministers who came to this country from Scotland in the early history of Canada. Most of them being Scotchmen, they naturally entertained feelings of affection and respect towards the parent Church in the Fatherland. And they therefore

called their Church "in connection with the Church of Scotland." They owed the allegiance of a son to a father, or of a daughter to a mother. They wished to be recognized by her in that relation, and always treated her with respect, and she, as a parent, was always ready to render them assistance when they were weak, and gave them of her means to aid them in their work. This she has done up to the present time, and is still doing, to this united Church, while she has of late ceased to render aid to those who have remained out of the Union. Now, the Presbyterian Church of Canada in connection with the Church of Scotland, in the year 1844, recognizing these peculiar relations, passed a declaration of independence referring to this very question of the signification of the words in the name—"In connection with the Church of Scotland." This was read to every minister and probationer applying for ordination, and to it he was obliged to assent, before he could be admitted into the Church. In that act it is declared :

"Whereas this Synod has always, from its first establishment, possessed a perfectly free and supreme jurisdiction over all the Congregations and Ministers in connection therewith; and although the independence and freedom of this Synod, in regard to all things spiritual, cannot be called in question, but has been repeatedly, and in most explicit terms affirmed, not only by itself, but by the General Assembly of the Church of Scotland, yet, as in present circumstances it is expedient that this independence be asserted and declared by a special Act;

"It is hereby declared, That this Synod has always claimed and possessed, does now possess and ought always, in all time coming, to have and exercise a perfectly free, full, final, supreme and uncontrolled power of jurisdiction, discipline and government, in regard to all matters, ecclesiastical and spiritual, over all the Ministers, Elders, Church Members and Congregations under its care, without the right of review, appeal, complaint or reference, by or to any other Court or Courts whatsoever, in any form or under any pretence; and that in all cases that may come before it for judgment, the decisions and deliverances of this Synod shall be final. And this Synod further declares, that if any encroachment on this supreme power and authority shall be attempted or threatened, by any person or persons, Court or Courts whatsoever, then the Synod, and each and every member thereof shall, to the utmost of their power,

resist and oppose the same. And whereas the words in the designation of the Synod "in connection with the Church of Scotland," have been misunderstood or misrepresented by many persons, it is hereby declared, that the said words imply no right of jurisdiction or control, in any form whatsoever, by the Church of Scotland over this Synod, but denote merely the connection of origin, identity of standards, and ministerial and Church communion. And it is further enacted that this supreme and free jurisdiction is a fundamental and essential part of the constitution of this Synod; and that this may be fully known to all those who may hereafter seek admission into our Church, it is enjoined that all Presbyteries shall preserve a copy of this Act, and cause it to be read over to, and assented to by every Minister and Probationer who may apply for ordination or induction into any pastoral charge."

Now, can anything be clearer than this? Here is proof positive of the nature of the connection. Yet, these gentlemen stand here and say that this is a branch of the Church of Scotland. The Rev. Mr. Lang has stated that over and over again. He says this is an established Church in Canada, and that the Church here only got its name and had a right to a share of the Clergy Reserves money because it was an established Church. I have just read to you the proof that it is not so; that the Canadian Church was a voluntary and independent association from the beginning. Both the Canadian Church and the Church of Scotland have agreed upon this point, and it is idle for these gentlemen to dispute what is indisputable. Then, as to the fact that the Synod of the Church was the Supreme Court, the governing body, ruling by a vote of the majority, I refer to page 278 of the evidence in the Dobie case by the Rev. Dr. Jenkins, who, being examined under oath, states:

"The Synod is the Supreme Court of the Church. Its powers are twofold—first, judicial; second, legislative. As a judicial court, it is a court of final appeal in all cases of discipline tried in the lower courts and appealed from them. Legislatively, its jurisdiction is twofold—first, it has a spiritual jurisdiction bearing upon the control of all religious matters; second, it has a secular jurisdiction bearing upon all matters of property, or in the nature of property, relating to the Synod."

Then he mentions the different courts, sessions and presbyteries, the highest court of all being the Synod.

Hon. Mr. BOTSFORD—Under what authority was this Church formed ?

Mr. MORRIS—It was formed in 1831 by the sole action of a convention of ministers, who then met, upon the recommendation of Sir George Arthur and a despatch from Sir George Murray, and they named their Church "The Presbyterian Church of Canada in connection with the Church of Scotland." That was the authority.

Hon. Mr. DEVER—Do you assert that it was under authority of Sir George Murray that the Church was formed ?

Mr. MORRIS—I do not say he gave the authority ; I say he recommended the union. They did not receive the power from Sir George Murray ; they did not require any power from outside. The power to form themselves into a Church is not denied even by our adversaries. The fact remains that this Church was created and has been united as a Church ever since 1831. The persons who formed the Church were Presbyterian ministers, who met together and said : We will organize a Church in Canada founded upon the same principles as the Church of Scotland in Scotland, and governed in the same way by Kirk Sessions, Presbyteries and Synods ; we will form and name this Church. There was no other power wanted. The parent Church in Scotland approved of this action, and has recognized the Church here ever since its formation.

Hon. Mr. DEVER—Would a part of the Church have power to declare themselves a Church independent of the whole Church, and do you urge that this new Church is part of the Church of Scotland ; in spirit I am speaking ?

Mr. MORRIS—It is no part of the Church of Scotland in Scotland.

Hon. Mr. DEVER—They have power here to create themselves into a Church?

Mr. MORRIS—Yes, they have power, and they did so, and it has never been disputed since, and the Church of Scotland has recognized them. Now, I will refer to the case of Forbes and Eden, which is to be found in the law reports of Scotch appeals, vol. 1, page 568. The holding in that case was as follows:

“Held.—A General Synod of the Church duly and regularly summoned, has the undoubted power to alter, amend, and abrogate the canons in force, and to make new ones.

The Synod is the supreme body where there is not (as there is in the Church of England) a temporal head.”

I also cite the remarks of the Judges in the same case:

“Lord Cranworth, p. 581, said: Save for the due disposal and administration of property, there is no authority in the Courts either of England or Scotland to take cognizance of the rules of a voluntary Society, entered into merely for the regulation of its own affairs. And at 528: Assuming that Synod had no power, that gives no jurisdiction to the Courts. There is no jurisdiction in the Court to inquire into the rules of a voluntary society at all. The only remedy which the member of a voluntary association has, when he is dissatisfied with the proceedings of the body with which he is connected, is *to withdraw from it*. Page 584: A religious body forms an *imperium in imperio*, of which the Synod is the supreme body. When there is not (as there is in the Church of England) a temporal head, the authority of the Synod is supreme.”

I cite this very important leading Scotch case to bear out the evidence of Rev. Dr. Jenkins, who spoke with reference to the rules and discipline of this particular Church, which have been printed every year since its formation, and I now produce those rules. The Church declared adhesion to the standards of the Church of Scotland, its forms and customs, and it has much the same kind of discipline, although it has a book of discipline of its own. I think I have shown you enough to prove

that this Synod was the supreme and highest Court in this Church, and the ultimate Court of appeal. There was no appeal to the Church of Scotland in Scotland.

Now, as to the origin of the Fund. A great deal has been said about this Fund. You have been told that, coming from the proceeds of the Clergy Reserves, it was only given to this Church because it was the Church of Scotland in Canada, as if there was any peculiar merit in being the Church of Scotland in Canada. I will demonstrate to you conclusively, I think, that it was not given to this Church on that account, but because it was a Protestant Church.* The Clergy Reserves were set apart, not for the support of the Church of Scotland, but for the support of a Protestant clergy, and the reason why this Church in Canada obtained a share was simply because it was a Protestant Church, and as much entitled to a share as the Church of England, which at first claimed the whole Fund. In proof of what I say, I will refer to the opinion of the Judges of England when the question was submitted to them. Deputies from the Presbyterian Church of Canada in connection with the Church of Scotland were sent to England to claim a share of this Fund, and Lord John Russell consulted the Judges of England upon the principles contained in the Bill passed by the Canadian Legislature, as to the meaning to be attached to the term "Protestant clergy," and here is their opinion, delivered by the Lord Chief Justice of the Court of Common Pleas :

" We are of opinion that the words 'Protestant Clergy' in 31 George III, chap. 31, are large enough to include and do include other clergy out of the Church of England and Protestant Bishops, priests and deacons that have received Episcopal ordination. When your Lordships ask if any other clergy are included, what other clergy? we answer that the Church of Scotland is one instance of such other Protestant clergy. And further in answering your Lordships if we specified no other clergy than the clergy of the Church of

* See Appendix.

Scotland, we did not intend thereby that the clergy of no other Church than the Church of Scotland may not be included under the said term 'Protestant Clergy.'"

So that as the Reserves were set apart for the support of a Protestant clergy, this Church received a share because it was an instance of a Protestant clergy. Other Protestant bodies in Canada also received a share—the English Church clergy, £275,851 5s. 2d. stg.; the Presbyterian clergy in connection with the Church of Scotland, £127,488 5s. 0d. stg.; the United Synod of Upper Canada, which was another body of Presbyterians, £2,240 11s. 0d. stg.; the British Wesleyan Methodists, £9,768 11s. 6d.—all of which is to be found in the records, and proved under oath here at page 322 of this Privy Council record. I have shown, then, that this money was not given to this Church because it was a State Church, but simply because it was a Protestant Church.

Now I come to the statement of the gentleman who spoke first here, the Rev. Robert Burnet, who dwelt upon the sacrifices that he as one of the original commutors had made in handing over to the Church his share of the capital of the Fund, when he might, as he said, have put the whole into his pocket. I do not suppose that the Rev. Mr. Burnet intended to make a mis-statement. He has probably forgotten all about the circumstances of the case. But let me point out to you that he was mistaken in saying that he could have put any part of that capital into his pocket. He never could have done so. To demonstrate this, I will refer you to the Act itself, 28 Vic., c. 2, authorizing the Governor of Canada to commute with the bodies and parties interested. It was there enacted—

"That the Governor of the said Province of Canada might, whenever he might deem it expedient, with the consent of the *parties and bodies severally*

interested, commute with the said parties such annual stipends or allowances for the value thereof, to be calculated at the rate of six per cent per annum upon the probable life of each individual, and that such commutation amount should be paid accordingly out of that Municipalities Fund upon which such stipend or allowance was made chargeable by the said last mentioned Act."

Mr. BRYMNER—Would the learned gentleman be kind enough to read the whole of that. There are parties and bodies mentioned. Commutation is with parties and with the Presbyterian Church of Canada in connection with the Church of Scotland.

Mr. MORRIS—I don't dispute that. I am going to show that these gentlemen could not have commuted individually, could not have received a cent of this capital personally. There were two factors to this commutation —*the bodies and the parties* interested. Up to that time the Ministers had only had a right to claim a certain annual sum. They had not a right to claim a share of the capital. To put an end to all semblance between Church and State, as the Act itself states, the Canadian Parliament was authorized to make this commutation with *parties and bodies* severally interested. The parties met in Synod in the year 1853, after this Act was passed, for the purpose of authorizing the Synod to carry out the commutation, and the resolution then passed by the Synod is what the learned gentleman who spoke the other day called a contract between the parties. The resolution states that it was thought desirable that such a commutation if upon fair and liberal terms should be effected. Then the Synod appointed commissioners with full power to give the sanction of the Synod to such commutation as they should approve of, and then to join all the sums obtained into one fund which should be held by them until the next meeting of the Synod, by which all further regulations were to be made. They authorized these Commissioners to obtain an Act of Parliament (22

Victoria, cap. 66), which is the Act incorporating this Board, the Act of 1858. Now, some little time before that, some of these gentlemen came to the conclusion that they did not care about this arrangement which they had authorized the Synod to make for them; they preferred some other plan by which they could put a share of the capital into their own pockets. One of them, the Rev. Mr. Gibson addressed a letter, the proved copy of which I have now before me, to the Hon. Mr. Chauveau, as follows:—

“GALT, 1st January, 1855.

“HONORABLE SIR,

“Being an incumbent of the Church of Scotland, at Galt, in Canada West, and consequently affected in my rights by the Bill secularizing the Clergy Reserves in Canada, and fully disposed to avail myself of the commutation clause, I therefore beg leave to inquire whether the Government are willing to commute with me as an individual, or must applications be first sanctioned by our Church. I write this with the concurrence of several of my brethren in this section of our country who are equally interested and desirous of information on the subject.

“May I presume to ask the favor of an immediate answer.

“I remain, etc.,

(Signed,) H. GIBSON, Minister.

“HON. P. J. O. CHAUVEAU.”

The reply was as follows:

“Secretary's Office, QUEBEC,
“24th January, 1855.

“REVEREND SIR,

“I am commanded by the Governor General to inform you in reply to your letter of the 1st instant, that His Excellency is advised that the Government cannot entertain applications for commutation from individual ministers unless the consent of the Church to which they belong shall have been first obtained.

“I have, etc.,

“P. J. O. CHAUVEAU,

“Secretary.

“REV. H. GIBSON, Galt.”

I think now I have made out my statement that the

commutors could not have put any part of the capital into their own pockets ; that the money was for the benefit of the ministers only as connected with the Church, and for the benefit of the Church as connected with the ministers. The reason why the Government would not give them the capital was because it was intended for the benefit of the Church in Canada, and if they had got the money they might have gone off to the United States, or anywhere else, and expended it as they liked, and then it would have been of no benefit to the Church. Therefore, from the beginning that money was more the property of the Church than of the ministers, who only had a claim upon the Revenues. The sums obtained were to be joined into one Fund, to be held by the Commissioners until the next meeting of the Synod, which was to make all further regulations. This shows you that from the very first the Synod dealt with, controlled and made regulations concerning the Fund. The following is the Synod's resolution :

Resolved.—“ 1st. That it is desirable that such commutation, if, upon fair and liberal terms, should be affected ; and that the Rev. Alexander Mathieson, D.D., of Montreal ; the Rev. John Cook, D.D., of Quebec ; Hugh Allan, Esq., of Montreal ; John Thompson, Esq., of Quebec ; and the Hon. Thomas Mackay, of Ottawa City, be the Synod's commissioners, with full power to give the formal sanction of the Synod to such commutation as they shall approve, the said commissioners being hereby instructed to use their best exertions to obtain as liberal terms as possible ; the Rev. Dr. Cook to be convener ; three to be a quorum ; the decision of the majority to be final, and their formal acts valid ; but that such formal sanction of the Synod shall not be given except in the case of ministers who have also individually given them, the said commissioners, power and authority to act for them in the matter to grant acquittance to the Government for their claims to salary, to which the faith of the Crown is pledged ; and to join all sums so obtained into one fund, which shall be held by them till the next meeting of the Synod, by which all further regulations shall be made ; the following, however, to be a fundamental principle which it shall not be competent for the Synod at any time to alter, unless with the consent of the ministers granting such power and authority : that the interests of the fund shall be devoted, in the first instance, to the payment of £112, 10s each, and that the next claim to be settled, if the Fund shall admit

and as soon as it shall admit of it, to £112, 10s., be that of ministers now on the Synod's roll, and who have been put on the Synod's roll since 9th May, 1853; and, also, that it shall be considered a fundamental principle that all persons who have a claim to such benefits, shall be ministers of the Presbyterian Church of Canada in connection with the Church of Scotland, and that they shall cease to have any claim on, or be entitled to any share of, said commutation Fund, whenever they shall cease to be ministers in connection with the said Church.

"2nd. That so soon as said commutation shall have been decided upon, and agreed to by the said Commissioners, the Rev. John Cook, D.D., of Quebec, shall be fully empowered and authorized, and this Synod hereby delegates to the said Rev. Dr. John Cook full power to endorse and assent to the several Powers of Attorney from the individual parties on behalf of the said Synod, and in their name, and as their act and deed, as evidence of their assent thereto.

"3rd. That all ministers be and they are hereby enjoined and entreated (as to a measure by which, under Providence, not only their own present interests will be secured, but a permanent endowment for the maintenance and extension of religious ordinances in the Church) to grant such authority in the fullest manner, thankful to Almighty God that a way so easy lies open to them for conferring so important a benefit on the Church.

"4th. That the aforesaid Commissioners be a committee to take the necessary steps to get an Act of Incorporation for the management of the general fund so to be obtained; the aforesaid Commissioners to constitute the said corporation till the next meeting of Synod, when four more members shall be added by the Synod."

So you will see that the Synod had the power to make all regulations concerning this fund. It was handed over to the Synod absolutely, to be regulated and disposed of subject only to the fundamental principle of guaranteeing to the Ministers their life interest, and also to the fundamental principle that they would cease to have a claim if they ceased to belong to the Church. For instance, if any one went to the Church of Scotland, as some of them did go, he ceased to have a claim because he ceased to be connected with the Presbyterian Church of Canada in connection with the Church of Scotland, and it was to this Church in Canada that the fund belonged. You will see from that resolution also that

the only thing the Synod had not power to alter, except with the consent of the commuting ministers, was the provision that each one should receive £112 10s. a year, and you will remember that that has never been altered to this day. Anything else they might alter without the consent of anyone. The amount obtained by the Commissioners from that commutation was £127,488 5s., and under the authority of the Synod they obtained the Act of Parliament, 22 Victoria, cap. 66, which incorporated this Board.

This brings me down to three propositions upon which I think this whole case turns. The first is that the fund from that time became the property of the church. No part of it was the Rev. Mr. Burnet's property. It was handed over by mutual agreement and consent to the Presbyterian Church of Canada in connection with the Church of Scotland. It was its property, subject only to the provision that the revenues were to be devoted to the payment of Mr. Burnet and others who had a life interest in it.

My second proposition is that this church, being a voluntary association, had power to form a union, which it did in 1875, and had power to change its name, which it did.

My third proposition is that if this Church legally and constitutionally formed this union, it carried its property with it. Its title to the property was not vitiated by the Act of Union. This Act of Incorporation of the Board, as well as the original resolution which I have read, proves that the fund is the property of the Church. Our opponents have referred to the original resolution. I do not object to their doing so, for we stand by it also, and it is embodied and contained in the Act of incorporation.

The Church, not being an incorporated body, thought it best to have the fund managed by a Corporation; therefore it appointed a Board to manage it, and applied to Parliament and obtained this Act, which provides that a certain number of members shall retire from the Board each year, and the Synod of the Church fills up the vacancies from year to year. I now quote from the Act to show that this property is the property of the Church. It states that the funds

"Are now held in trust by certain Commissioners, on behalf of the said Church and for the benefit thereof;"

And again—

"But such holding is subject always to the special condition that the annual interest and revenues of the said moneys and fund now in their hands shall be and remain charged and subject, as well as regards the character as the extent and duration thereof, to the several annual charges in favor of the several ministers and parties severally entitled thereto."

You cannot go back of that Act and say that the fund belongs to the commutators.

This, then, is the nature of the contract. It declares that the money belongs to the Church and is held in trust for the Church, subject to the special condition that the first charge on the interest and revenues of the then fund shall be the payment of these seventy-three ministers who were parties to the commutation.

Hon. Mr. CARVELL—Does that arrangement make provision for the residue of the fund after these gentlemen have departed this life?

Mr. MORRIS—It says that it shall be a permanent endowment for the Church. It belongs to the Church. The moment a commutator dies, of course his interest ceases. Then, new men were coming into the Church all the time,

and the next man according to priority of admission to the Church stepped into his shoes, as it were, and took his place in the enjoyment of the revenue. So it has been ever since. Some of these new men have been enjoying a revenue from this fund for twenty years and more, and their vested rights in it are just as sacred as those of the seventy-three original commutators. This Act of the old Province of Canada (1858) which our opponents appeal to with so much confidence decides the whole question in favor of the promoters of this Bill. Subject to the provision respecting vested rights being secured to the commutators, the Act gives the Church absolute power to administer and dispose of the fund at will. It has so controlled it ever since, and regulated the payments that the new men were to have; sometimes it raised them, sometimes it lowered them. Then, section 4 goes on to state that the Board :

“Shall have power and authority to frame and make statutes, by-laws, rules and orders, touching and concerning the good government of the said corporation, and the collection, administration, investment, application, appropriation and management of the funds aforesaid and any other matter or thing which to them shall seem fit or expedient for the effectual attainment of the objects of the said Corporation and the administration of its concerns, and for fixing and ascertaining and establishing the scale or rate of stipend from the said funds to the ministers or others entitled thereto under the provisions of this Act, subject however, to the aforesaid original annual or other charges, and the same to vary, alter, repeal, or make anew, provided always that all such by-laws shall be submitted to the first meeting of the Synod or other supreme court thereafter for confirmation, amendment or rejection.”

Now this shows that the Synod not only dealt with that Fund from the beginning, but that it was authorized by this act so to deal with it and to sanction by-laws. The Board could not make by-laws without the sanction of the Synod. And when gentlemen come up here and state that the Synod had not power to deal with the capital of that Fund, I answer that under this Act it had power to

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deal with, and dispose of the capital, as the above quotation proves.

It might dispose of the fund just as it liked, subject always to the condition that the life interest of the commuting ministers who remained in connection with the Church should be secured.

The original commutors expressly declared that the only matter the Synod could not alter was that particular clause, that they were to preserve their life interest.

Hon. Mr. DEVER.—Supposing they went out of the spiritual communion of the Church of Scotland, could they dispose of that property?

Mr. MORRIS.—If the Church went out legally they could. But that is not the point in dispute. It did not go out of spiritual communion, it retained all its principles and doctrines. I am not prepared to say that without the consent of the whole it could go out of spiritual communion with the Church of Scotland, so far as holding by the doctrines of the Church of Scotland, and retain its funds, but I suppose if every one consented, it could join the Church of Rome, but that is a different question entirely.

Hon. Mr. DEVER.—Parties here say that they are out of communion.

Mr. MORRIS.—I do not think so. I have proved that they never were in connection with the Church of Scotland, and the Church of Scotland herself has expressly declared that the same communion exists, and has approved of this union, and our opponents attach great importance to what the Church of Scotland says. I will read the declaration of the Church of Scotland which heartily endorses this union, and says that this Church

holds to the original doctrines, and that she saw nothing in the union to disapprove of. The Church acts through the Synod. The Synod is a representative body; it is composed of representatives of the whole Church, and every congregation sends two representatives; one minister and one layman. So the Synod is the supreme, ecclesiastical and judicial court in dealing not only with that which is spiritual, but as I have shown you from the Act, in dealing with temporal matters; it is also perfectly independent of the Church of Scotland. I explained that the relation was simply that of a son to a father, or of a daughter to a mother; and as the rich father often helps the poor son, so in this case the mother Church very often gave pecuniary aid to her daughter in this country. She always gave good advice to her children, and continues to do so up to the present time. She gave them very good advice about this union, which some of her wayward children would not take. I think I have now demonstrated my second proposition, that this money was the property of the Church.

But had this Church the power to change its name? Now, I will ask, who really doubts this power? I never heard any one doubt it except those seven gentlemen. We are seven, they say, the majority are the dissenters, and therefore we are the true Church, and the Synod seceded from us.

Upon that principle one man might say, I am in the minority, but I am the Church, and entitled to all its property, buildings, manses and colleges.

I never heard any one except these gentlemen doubt the power of a voluntary association like this to unite. The General Assembly of the Church of Scotland never doubted that power, and I would like to refer again

to their resolution, more particularly to impress it upon the minds of honorable gentlemen present, not, as I said before, that it had any right to interfere, but because the Church of Scotland is a very influential church, a very venerable church. The Church of Scotland, perhaps as much as any church in the world, is wedded to customs and forms. The General Assembly which meets at Edinburgh every year is composed of some of the most eminent men in the land. It is an ecclesiastical court, and lawyers learned in ecclesiastical law look after its interests. That court knew all about the Scotch cases which our opponents cited to you from some old-fashioned books to shew that a union could not be effected against the wishes of a minority, but it also knew that these had no application in this country. What did that Church say in 1872, before the union took place, when her daughter here sent delegates home, as she had always been in the habit of doing, in order to get advice? Dr. Jenkins tells us that he was one of the deputies. He says:—

“I did appear before the General Assembly of the Church of Scotland at its meeting in May, eighteen hundred and seventy-two, and furnished the General Assembly to the best of my ability with *all the information that I possessed* respecting negotiations for union in so far as they had proceeded. Whereupon, after kindly expressions from the Moderator, the General Assembly agreed to the following resolution: ‘That the General Assembly desires to record the high satisfaction with which they have heard of the energy, Christian zeal, and distinguished success with which their work as a Church is carried on by the Synod of which Dr. Jenkins is the representative, and in bidding them God speed in the great work before them in a great country, daily advancing in wealth and population, they feel assured that that work will be carried on by God’s help for the future as it has been in the past, and that no union of the several Presbyterian bodies in Canada will be agreed to, without their being all fully satisfied that the great object of extending the benefits of religion will by that union be even more vigorously and effectively carried on than now.’ The quotation goes on to say: ‘The Moderator then, at their request, tendered the thanks of the Assembly to Dr. Jenkins for his able, eloquent, and most interesting address.”

It was suggested by Mr. Macmaster that something was kept back, and that the Church of Scotland never was told of this terrible spoilation that was going to take place,—that this money was going to be handed over to the united Church. I will show presently that the Church of Scotland knew all about it, and that it approved of this very disposition of the fund and sanctioned it.

Now, I read this simply to show that the Church of Scotland, that wise and learned Church Assembly, the highest deliberative body of that Church, did not doubt that this Church could form a union. It has been asked, how do you prove that it had a right to form the union? I say it had a right to do so, because it was a voluntary association. It seems to me that it is only necessary to state that fact to prove my position. The Church of Scotland understands all that sort of thing. It admits impliedly by its resolution that this Church had a right to form a union. It said: We are sure you will not go into this union unless you are satisfied it will be of general advantage. And the Church here was satisfied that it would be of benefit.

In 1875 another deputation went from the Presbyterian Church of Canada in connection with the Church of Scotland to the General Assembly in Edinburgh, and what did the General Assembly say then?

"The General Assembly welcome with sincere sentiments of esteem and regard the respected deputies from the Synod of Canada as brethren whose sacrifices in promoting the religious interests of our countrymen in that colony have deserved the gratitude of the Church both at home and abroad, and while receiving with profound concern and regret the intimation that on the subject of an incorporating union of Presbyterian Churches, threatened division in the Canadian Synods is endangering the cordiality of co-operation which is so essential to the success of the work of the Church in all lands, the General Assembly claim no title to review the proceedings which have issued in that result; but the General Assembly, while continuing to recognize all old relations with the brethren in Canada, are quite prepared to declare, after consid-

eration of the terms of the proposed union as laid before them in their committee's report, as they hereby do declare, that there is nothing in the said terms of union to prevent the Assembly from cordially wishing God speed in their future labors for the Lord to brethren who propose to accept the union on that basis, or from co-operating with them in any way that may be found possible in the new state of things in promoting the religious interests of Scottish Presbyterians in the Canadian Dominion."

Now, what does that mean? It means that the Church was sorry there should be any dissension at all. It did not sympathise with the minority, who were fomenting discord, who were dissenting from the majority of their brethren, and it received with profound concern and regret the intimation that threatened division was endangering the cordial co-operation, that is so essential to the work of the Church in all lands. If they had been told there was a complete union, that there was no division, would they not have said, we rejoice to find that this is a perfect union? They say in the resolution that they absolutely approved of the union, and admit the fact that the Church could contract a union, but they extremely regret to see that there were dissentients. Still holding to their original attitude, they claim no title to review the proceedings. They said, in effect, The matter rests with yourselves; you have the right to take these proceedings, and we are satisfied to leave them to you. "The new state of things!" say our opponents. They seem to think there is a great deal in that. Of course it was a new state of things. There was this union with the churches. They were not exactly as they were before. But the Church at home was ready to co-operate with them in the new state of things, just as it did before, "in promoting the interests of Presbyterians in the Dominion of Canada." Now, I emphasize particularly what the Church of Scotland said with reference to the terms of the union. They said that they had considered the whole terms of union—the whole terms, not a part of

these terms—and they saw nothing in them to disapprove of. Now, what were the terms of the union? I hold in my hand a printed statement prepared by the members of the deputation which went to Edinburgh that year—a printed statement of the whole matter, prepared for submission to the General Assembly of the Church of Scotland, and submitted to that body.

An Hon. Senator—Who first proposed this union?

Mr. MORRIS—It was proposed long before it took place. It was proposed fifteen or twenty years before that, in Synod, and I think that the late Judge McLean, the father of a gentleman who is sitting here as an opponent to union, was one of the promoters of it.

Mr. MCLEAN—That is simply forcing the case, and is only for the purpose of prejudicing this Committee.

Mr. MORRIS—I will turn up the resolution. I know he was appointed by the Synod of the Presbyterian Church of Canada in connection with the Church of Scotland as a member of the Committee to see whether the union of all the Presbyterians could not be effected. I refer to Synod Minutes for 1852, p. 20. The union was proposed at first in Synod, by one of its members, and the negotiations for this union, which took place after they had been under discussion for over five years, were submitted to all the bodies in the Church. The question asked has turned me rather aside from the line of my argument, though I am glad to give information on every point to any honorable gentleman who may desire it. I was answering the statement of Mr. Macmaster with reference to the report of the deputation to Scotland. Of course he had been misinformed when he said that the terms of the proposed union were not submitted to the parent Church in Scotland. Now,

I have read to you the declaration of the General Assembly of the Church of Scotland in Scotland, in which they expressly state that the terms were submitted to them; that they considered these terms, and saw nothing objectionable in them. But Mr. Macmaster said that the only thing submitted to them was the basis of union, which he called the ecclesiastical basis, having reference to the standards of the Church and its doctrines.

To disprove this I refer to the long letter of these deputies to the Church of Scotland. They related the whole proceedings relative to the union from first to last. But we were told that these eminent gentlemen: Rev. Dr. Cook, one of the most venerable members of the Church and a Commutor, Rev. Dr. Jenkins, Prof. Ferguson, of Kingston, the Rev. Daniel M. Gordon, of Ottawa, and Mr. James Croil, agent of the Church, went home and only gave the Assembly a part of the terms of Union. Is it to be believed that these gentlemen, who were deputed on the part of this Church, went there and only told half the story? Gentlemen, I put it to you: is it likely? Here is their own written statement in which they say they told all about this contemplated union. If you take what is called the basis of union and look at it, you will see that it is one document composed of several parts. It is called the proposed terms of union of the Presbyterian Churches in the Dominion. First is the Preamble and Basis which holds to the Bible and the Westminster Confession of Faith, and the larger and shorter Catechism.

Then follow the resolutions relating to other churches, and the resolution regarding the disposal of the Temporalities Fund, being exactly the same disposition as is contained in our Bill now before you—all this is one document.

Would our opponents dare to affirm that these distinguished men who formed the deputation, and submitted this printed document, giving a history of the whole of the steps towards union, only submitted the first part and left out all the rest ? I say it is incredible, and it is useless to discuss the matter any further. Now I think I have disposed effectually of the point which Mr. McMaster made, that the Church of Scotland, in Scotland, only approved of the doctrinal part of the terms of union, and did not approve of the disposition of the Temporalities Fund proposed by this Act. The Church of Scotland, in Scotland, recognized the union, and approved not only of the ecclesiastical basis but also of the act by which the Synod took this money into the united church. Before I leave this question, I would like to read you another resolution of their General Assembly, passed after the union took place, and which recognizes the principle that the Canadian Church had a right to unite. I have endeavoured to prove that this Church had a right to form a union, and that the General Assembly has said so expressly. Well, in 1876, a deputation was again sent from the Presbyterian Church of Canada in connection with the Church of Scotland, one year after the union, and what did this Assembly say ? They had been told that the union had taken place. What union was referred to ? They were not told that the Synod had seceded from the seven gentlemen ; and that these seven gentlemen were the Church. They were told that this church in which they had so long taken an interest, and to which they had rendered assistance for so long, had formed a union. What did the Assembly say ?

"The Assembly have heard with much interest that the *union* of Presbyterians in the Dominion of Canada has at length taken place. The terms on which this union has been effected, having been brought under the consideration of the last General Assembly, and that Assembly having declared that there is nothing in those terms to prevent the Assembly from wishing God speed in their future labors for the Lord to brethren who propose to accept

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union on that basis, or from co-operating with them in any way that may be found possible in the new state of things, the General Assembly resolve to record, and through the respected deputies from Canada to convey to the brethren in the United Church of the Dominion, an expression of their earnest prayer that God may be pleased to hallow and bless the union, and to make it the means of promoting peace as well as all the other interests of religion among the people. The Assembly, at the same time, regret to learn that the threatened division in the Canadian Synod, of which intimation was given in the Report to the last General Assembly, has, to some extent, become a reality. As to differing views of duty in regard to accepting or rejecting the union, this Assembly, like all former Assemblies, express no opinion; but being persuaded that those brethren who have declined to enter the United Church, not less than those who have accepted the union, have acted under a strong sense of duty, the Assembly assure them of their continued regard and desire for their prosperity and usefulness. And, while the Assembly will not cease to pray and use such means as may be within their power, and entreat their brethren in Canada to unite in the same prayer and efforts, that all heats may be allayed and any remaining division may be healed, they will cordially continue to co-operate in any possible way with both parties in promoting the religious interests of their colonial brethren. The General Assembly having learned from the deputies that an impression exists in Canada, that the Church of Scotland regards the action of those connected with her in Canada in forming the union now consummated as an indication of disloyalty to the Parent Church, assure the deputies that they entertain no such idea; but, on the contrary, give full credit to the representations which they have received from the brethren on that subject."

Now, if that resolution means anything at all, it means this, that they would have rejoiced if there had not been any division; if these seven gentlemen had joined with their brethren and gone into the union. "Any remaining division healed." What does this mean? Surely that they were desirous that the union should be complete.

So you see that the Church of Scotland from the beginning has approved of and sanctioned the union, and has declared that those who entered into the union were not disloyal to the parent Church, or in other words that they were loyal to it. However, our opponents have said over and over again that they entertained such feelings of loyalty and reverence for the parent Church that they could not take part in such a union. And what have we

done? The great Presbyterian family in Canada have met and said, let us in this new land forget the quarrels of our forefathers, and let us join together and unite our efforts for the common good. Was this not a Christian and a loyal act, of which no one need be ashamed?

Having shown that the Church of Scotland approved of this union, I will proceed to show that the Legislatures of the whole of the Provinces have recognized it as an accomplished fact. The judgment of the Privy Council rendered in the case of Dobie does not touch these acts at all. It is held in that judgment that the Act of the Legislature of Quebec amending the Act which incorporated the Temporalities Board was beyond the power of that Local Legislature, because it purported to amend an Act of the old Province of Canada, which extended over two provinces, and because the fund involved was held for the benefit of parties living in the two provinces. That is all the Privy Council judgment decides. But the union Acts that were passed by the Legislatures of Quebec, Ontario, Manitoba, Nova Scotia, New Brunswick, and Prince Edward Island have not been set aside, and those Acts all recognized the fact that this union had taken place; indeed they expressly stated that this Presbyterian Church of Canada in connection with the Church of Scotland had formed a union with the other Churches. This, I think, is a complete answer to the statement that it could not form a union. The union is acknowledged in all these Acts, which state "whereas these Churches have agreed to unite." Now, I say further, there is nothing new in this principle of a union between voluntary associations. It is not the first time that a union of that kind has taken place in Canada. The Parliament of old Canada recognized that fact and sanctioned it, and authorized voluntary associations like ours to unite. I refer to the union which

took place in the year 1861, 24 Vic. cap. 124, being the union of the Presbyterian Church in Canada and the United Presbyterian Church in Canada under the name of the Canada Presbyterian Church. That Act is almost identical with our own Act in many of its provisions. It is there stated that the two churches had agreed to unite, and the Fund that belonged to each before the union was to be applied to the united Church, protecting always vested rights. The united church then formed was one of the churches which came into the present union. No one when the churches formed the union of 1861, thought that they acted immorally or illegally. No one said when that union took place, of two Presbyterian Churches holding the same faith, doctrines, standards of Government and discipline: that they were not doing what was right and proper. I do n't suppose it was unanimous then, anymore than our union is now. There were, doubtless, a few who dissented, but none of them said: we will contine the church, we are entitled to the property. The Parliament of Canada also thought it was a good thing, and recognized the principle that voluntary associations can unite.

The reason why our local Act of Parliament was secured was to regulate the holding of property of the Church, and not to obtain legislative sanction to the union; and the reason why this bill is asked for now is simply because certain necessary changes were made under the new state of things. It is for the purposes of administration, and amongst other things, in order to provide that these ministers who did not go into the union shall not be deprived of their stipends.

Hon. Mr. DICKEY—Allow me to ask you with regard to that Act you have just quoted, who were the bodies that were authorised to unite after obtaining legislation in 1861?

MR. MORRIS—One of the churches was called the Presbyterian Church in Canada, and it was formed in this way: In 1844 there were here in Canada a number of sympathizers with the disruption that had taken place in Scotland when the Free Church was formed, about the year 1843. These ministers seceded from the Presbyterian Church of Canada in connection with the Church of Scotland, and formed another Presbyterian Church, called the Presbyterian Church in Canada. At the same time there existed another Presbyterian Church in Canada, called the United Presbyterian Church of Canada. Well, those two churches thought that they would come together and unite. That was one of the first steps towards a general union. They were both voluntary associations, and they called themselves the Canada Presbyterian Church, and the Canada Presbyterian Church is one of those that joined in forming the present union. As a matter of fact, two of the four bodies which united were called in connection with the Church of Scotland. There was a Church in the Maritime Provinces called in connection with the Church of Scotland, which was very similar to our own Church, but bearing another name. Then there was a Presbyterian Church of the Lower Provinces.

Now, as to the meaning of the judgment of the Privy Council. Mr. Macmaster argued that by the use of the words "majority of Synod," in one place, the Privy Council held that this Synod did not unite, but that only a majority of the Synod united. If, however, you look at the whole of the judgment, you will see that the Privy Council did not intend to express any opinion, one way or the other, as to the effect of the Synod's action. In another place the judgment speaks of the action of the Synod, and not of the majority. The Privy Council states: "The minority, which consisted of the Rev. Robert

Dobie and nine other members, dissented from the *action of the Synod*," and again it states that "the *Synod* resolved." It only states the fact when it says there was a minority, but there is no reason why we should put that in our Bill. When the Parliament passes an Act, it does not say that the majority of Parliament resolves, but only that Parliament resolves. The Synod was a legislative body more than anything else; it acted by the majority, but it did not say that the majority agreed to do a thing. Now, this judgment of the Privy Council goes on further to say:—

"In the case of a non-established Presbyterian Church, its constitution, or in other words the terms of the contract under which its members are associated, are rarely embodied in a single document, and must in, part at least, be gathered from the proceedings and practice of its judicatories. Every person who becomes a member of a Church so constituted must be held to have satisfied himself in regard to the proceedings and practice of its Courts, and to have agreed to submit to the precedents which these establish. The Respondents were therefore, justified in referring to the minutes of the Synod from 1831 to 1875, for the purpose of showing the extent of the power vested in majorities by the constitution of the Church. The Minutes, which were founded upon by Counsel for the Respondents, afford abundant evidence to the effect that, in all matters which the Synod was competent to deal with and determine, the will of the majority as expressed by their vote was binding upon every member of the Synod, a proposition which the Appellant did not dispute."

Now, that is exactly what I proved by the Rev. Dr. Jenkins, that this Synod is what he says it is, an *imperium in imperio*—that the will of the Church, expressed through the Synod, is binding on every member.

Mr. BRYMNER—Please to read a little further.

Mr. MORRIS—I will read as much as you like, if you will point out what you want. I have not finished yet. When the Synod desired an Act of Parliament, they came to Parliament and got it; and now that the Synod wants an amendment to that Act, it comes

to Parliament for it. So, I have shown you that the Privy Council, in this matter, leaves us precisely where we were, and it expressly declares that we are justified in appealing to the minutes of Synod.

Now, I desire to call the attention of the honorable members to the case of the Methodist Episcopal Trustees against Brass (Upper Canada Reports, old series, vol. 6, p. 438, and vol. 5, p. 357), from which I have made extracts. In that case, the Church which had adopted Episcopacy as its form of government resolved to drop that, and form a union with another body, called the Wesleyan Methodists, and this union was carried out. It had also a Trust Fund, and was almost identical with our own case. This Trust Fund was for the benefit of the ministers, just as our Church has a Trust Fund for the benefit of ministers. By their laws, a majority of three-fourths was necessary to carry a measure, while under our Church a majority only was necessary. The union was carried by a majority of at least three-fourths, but there was still a minority, just as there was in our Church, and this minority said: "We continue the Church; we do not like this union; we claim all the property; we claim to be the Church." Chief Justice Robinson, in delivering judgment, said:—

"Not so; you are bound by your own rules; the majority carries; this property belongs to the Church, and it went with the church into the union."

The Church changed its name to that of the Methodist Church in Canada, a name almost like our own, but it did not change its form and substance, and it did not lose its property, because it did what was lawful in itself. Chief Justice Robinson, in delivering judgment of the Court, said:—

"It was competent to the conference to make that change in the constitution of the Society which they did make; that the change was accomplished

in a manner sanctioned by their code of discipline ; and that by the proceeding the religious body did not lose its identity, and has not lost the property which they held before the abolition of Episcopacy."

Could any case be more in point than that—almost exactly similar to our own. Then he goes on further to say :—

" It appears to me perfectly clear, that if the change made in the government of the society was made by a competent authority and in a proper manner, the Church could not be dissolved or destroyed by it. It would be the same religious community under another name, and under other government ; and those who dissented and attempted in opposition to the constitution to keep up the old order of things, would cease to belong to the society.

" The change, to be sure, was such as rendered part of the former name, viz., "episcopal" inapplicable, and therefore the name was also changed, but you may have the *substance under different forms*, and under different names and sufficient may be left of the former substance to preserve its identity. We have instances of these changes of name in cases of individuals, of divisions of territory, of corporate bodies, but it is clearly not correct to say that because the name is different, therefore what was formerly known by that name no longer remains and can no longer preserve that relation which had existed between it and another object."

Now in that case they changed even their form of episcopacy, but the Presbyterian Church of Canada in connection with the Church of Scotland changed nothing at all except the name. It holds to the same standards as the Church of Scotland, it has the same doctrines, same confession of faith, shorter catechism and Presbyterian forms of government.

Having traced the origin of the Church and of the Fund ; having shown what the contract is which our opponents rest upon, namely, the Act of Incorporation of the Board ; having shown that under this Act, and under the original resolutions of commutation, the dissenting minority were only entitled to claim so much per annum, out of the revenues of the Fund, during life, and at their death all their interest ceased and the

capital fund reverted to the Church, I come to the next and last point :

Has this trust been violated ? Our opponents say that it has been changed. But has it been changed ? I think I have proved that the church had a right to dispose even of the capital of this Fund, so long as the annual stipends of the surviving commutors were secured, and in my opinion the dissenting minority have forfeited all their claims, because, as I have already shown, by the Scotch case of Forbes vs. Eden, that being in a minority, their only course was to withdraw from the Church.

I maintain that they have withdrawn from the Church, and if the majority wished to exercise their strict right they might say : Gentlemen, you have withdrawn from our Church ; according to the original contract all your claims ceased when you withdrew, and you are not entitled to anything. But they did not say that, and it is not right for our opponents to say that the majority have tried to trample on the minority. Instead of the rights of the minority being trampled upon, I will show you that never in this world was a minority treated more kindly than the majority have treated this minority. I ask, has this trust been violated ? To prove that it has not, I will ask you to look again at the original act of incorporation. I dare say it is impressed very clearly on your minds now that according to this act, this contract, as they call it, the property belongs to the Church, subject to the special condition that the annual interest and revenue in the hands of the Board at the time of the passing of this Act should remain subject to the charges in favor of the several ministers entitled thereto, so long as they remained in the Church, and no longer. The Board was bound to pay them their annual stipends. Has it ever ceased to pay them up to this time ? No, it has paid them regularly, and will continue to pay them. Under the Bill now petitioned

for commutors are guaranteed their stipends: they are a first charge on the fund. Wherein, then, has the trust been violated or derogated from in so far as these gentlemen are concerned? Not in one iota. They have nothing to complain of. They have not the slightest grievance. They are treated exactly the same as they have always been treated, notwithstanding that they remained out of the union. They are getting the same as they got before the union, and they will continue to get it as long they live. And yet they are not satisfied. Why? Because, they want the capital. They say, we must have the capital, but we say you are not entitled to it, as I have shown you.

What other grievance have they set up? They say they have no representation on the Board. Does the Act of Incorporation guarantee them any representation on the Board? No. What does the Act say? It merely says that every year, at the annual meeting of Synod, the Synod may fill up vacancies on the Board from the ministers connected with the Church. These gentlemen are not connected with the Church now; they have not chosen to remain by their Church when it acted constitutionally, continued its identity, and formed the union; how, then, can they be entitled to representation? But did the majority take that legal view of the case? No, it did not. Two of these gentlemen happened to be on the Board at the time of the union, and the Synod said: we will continue you on the Board, although we do not consider that you have any right to be there. This was done in the hope of conciliating them; it was thought that after awhile, when they had time to reflect, they would come into the union. So I say, then, that never in this world, so far as I know, was a minority treated more considerately and more generously than this minority has been treated. They have complained that their names were, after the union, entered on

the roll of the united Church. This was done out of consideration for them, and their names were not erased in a hasty and unkind way, but were kept on the roll of Synod, until at length it became necessary to strike them off, and this was done with the greatest reluctance.

How different was this action of the majority from the conduct of the minority. What did these seven or eight or ten men do? I hold here the proven copy of the official minutes of their so-called Synod, held in St. Andrew's Church, Montreal, on the 14th of June, 1876, and signed "Gavin Lang," whereby they declared that all their brother ministers who went into the union—

"Are no longer ministers of the Presbyterian Church of Canada in connection with the Church of Scotland in Canada, and that they are hereby deposed from the Ministry of said Church."

Well, it is an awful thing to be a deposed minister. A deposed minister is disgraced for life, and cannot perform any Ministerial act. So you can fancy the disastrous results that would have followed if this wholesale deposition had been of any force. Our friend, the Rev. Mr. Gordon, and his brother ministers, have been uniting people in the bonds of matrimony ever since, and the whole of these marriages would be null and void.

Following up this act of deposition, the clerk of their Synod, the Rev. Robert Burnet, who is now present here, wrote an official letter to Scotland warning the Moderator of the Presbytery of Langholm, that the Very Rev. Principal Snodgrass, of Queen's College, who had received a call to that Parish, was a deposed minister. I will now read you his letter as follows:—

"LONDON, Ontario, Dominion of Canada,
2nd October, 1877.

"To the Rev. Moderator of the Presbytery of Langholm:

"DEAR SIR,—I am directed by the Synodical Commission of the Presbyterian Church of Canada, in connection with the Church of Scotland, to

"represent to the Presbytery of Langholm that we have heard, with deep
"regret, of the presentation of the Very Rev. Principal Snodgrass to the
"Parish of Canonby.

"Principal Snodgrass as a minister of this Church and head of Queen's
"College, Kingston, has made himself most active in attempting to obliterate
"the honored name of the Church of Scotland in this colony, in fact, has
"almost succeeded. If it be a sin and a crime to deny the Church, he is verily
"guilty, and ought not to have the opportunity effectually to do in Scotland
"what he has done in Canada, overthrow the Church.

"The Very Rev. Principal has been *deposed* from the office of the ministry
"in our Church. He was act and part in the consummation of the union
"recently accomplished between the Church here and the bitterest enemies
"of the Church of Scotland in any of the Colonies belonging to Great
"Britain.

"I may add that the public opinion of the Free Church regarding Principal
"Snodgrass, (or what those of us attached to the Church of Scotland call, 'the
"logic of events') has driven Dr. Snodgrass from his sphere of labor in Canada,
"as it has already driven many ministers lately belonging to the Church of
"Scotland, from their congregations. We, in Canada, Churchmen, and Scot-
"tish Churchmen, would be recreant to our Church and to our principles, did
"we not thus publicly protest against the induction of the Rev. Principal
"Snodgrass into any parish in Scotland.

"In name and by authority of the Commission of the Presbyterian Church
"of Canada, in connection with the Church of Scotland.

"ROBERT BURNET,
Clerk of Synod and of Commission."

The Presbytery of Langholm treated this letter as it deserved, and inducted the Very Reverend Principal; but these proceedings of the minority sufficiently show the spirit which has animated them in this controversy throughout.

I have taken up more of your time than I intended, and have only a few more words to say, with reference to this proposed compromise of which the Rev. Mr. Lang talked so very plausibly. The same offer was made at the very end of the proceedings in the House of Commons, after all the other gentlemen had spoken. Now, that was

not the attitude of these gentlemen during these seven years in which they have been trying to get hold of the Fund. They claimed the whole of the Fund, upon the ground that the Church had seceded from them. They came also with an appeal to the House of Commons asking to be incorporated as the "Presbyterian Church of Canada in connection with the Church of Scotland." And it was only at the last moment, in the Committee of that House, when they saw that things were going against them, and that they could not make out their case, that they changed their policy and came forward with this plausible proposal for a compromise. At first they were willing to take \$100,000, then they would take \$80,000, and finally they only asked for \$50,000. Mr. Girouard, M.P., remarked in the House of Commons that it was like a Dutch auction. In their final proposition to this Committee, they say: Let us divide the Fund as seven is to 27. We are seven, and the number of commutators at the time of the union was 27, and in that way we shall get our fair proportion. That is not a fair statement of the case at all. I am sure that no honorable gentleman here would think of making a division on that basis of a fund intended to be indivisible, when the rights of these men are already perfectly secure. These gentlemen assume that the original commutators now living are the only individuals who have vested rights in the Fund. That is not correct. According to the terms of the Act of Incorporation and By-Laws, the moment an original commutator died, the next man in the Church, according to priority of induction or admission into the Church, stepped into his place and had his share of the revenue. There are many of these men who have been enjoying these revenues for the last twenty years, some more than that; there were over one hundred of them at the time of the union, and if this Fund were to be divided in the way proposed—only among the surviving com-

mutors—the effect would be simply to deprive a number of ministers of their just dues, and hand them over to persons who have not a shadow of a claim to them, but who are now getting, and will continue to get, all they are entitled to. That is the real meaning of this offer of compromise which has been submitted to you at the last moment. Our Bill is itself a compromise on our part, for we are offering these gentlemen more than they are entitled to under the law.

Hon. Mr. ODELL—What amount do you offer in your compromise?

Mr. MORRIS—We say our Bill is a compromise, from the fact that it guarantees to them rights which we consider they have lost by leaving the Church; and it is a compromise because we give them certain representation on the Board, and an ultimate share in the residue of capital. Sub-section 2 of the 4th section of the Act reads as follows:—

"After the first and third classes of payments named in section one shall have been extinguished and provision shall have been made for the annual receipt in perpetuity of the sum provided for in the second class of payments, each congregation which declined to become a party to the union, and which shall not have entered the union before the time of the extinction of such payments, shall be entitled to a share of the residue, such share to be in the proportion of one to the whole number of congregations on the Synod Roll on the Fifteenth day of June, 1875, the date of the union."

Now, that is treating the minority exactly as the majority are treated. If you were to give a share of that capital over to the minority now, you would be giving them what you do not give to the majority. They do not get any share of the capital; their ministers only get their interest in the revenue. The Fund was intended to be kept as an undivided Fund until all vested interests ceased, but as a compromise we said that we would not object, when vested

rights had lapsed, to hand over to the original congregations remaining out of union a share of the Fund proportioned to their number. That offer was on the principle which I have already explained to you, namely, that this money was not designed for the benefit of ministers apart from congregations. The two were connected in their interests. It was for the benefit of congregations having ministers, and for the benefit of ministers having congregations. We say to them: Show us how many congregations you have—that probably would be a better arrangement for them than if we paid only the commutors. Suppose ten congregations remained out of the union, and I believe that is the correct number, they will get their equitable share.

Hon. Mr. BOSTFORD—Irrespective of the number in each congregation?

Mr. MORRIS—Certainly, so far as numbers go, the congregations which remained out of the union, with one exception, are pretty small.

Hon. Mr. ODELL—Can you give any approximate amount in money, at all events?

Mr. MORRIS—I think it will give them about \$23,000, but it makes no difference whether the congregations are large or small so far as the principle is concerned of dividing the Fund according to congregations. If they had ten or twenty congregations at the time of union still remaining out of union at the time of division, they get a share according to that number. We consider this is going a very long way, much further than the minority had a right to expect.

Hon. Mr. POWER—What did you say was the whole number of congregations at the time of the union?

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Mr. MORRIS—There were 138 congregations, and ten went out, though I believe some of the ten had not ministers with them. The fund is \$322,000, and their share would be about \$23,000.

Hon. Mr. POWER—I asked Mr. Macmaster if this act was the same in substance as that passed by the Legislature of Quebec, and he pointed out some point in which it differed. Would you be kind enough to explain what that difference was?

Mr. MORRIS—It is the same as the Ontario Act, but the Quebec Act was slightly different. In the Quebec Act there is a slight inconsistency in a certain section where there is a proviso protecting the rights of these dissenting ministers which guaranteed their claims to their successors in office. The word "successors" has been left out of this bill, and the guarantee extended to all men who were on the roll at the time of the union. It treats the minority the same as it treats the majority, because under the Bill, the successors of the majority do not get anything. It is only the men who were on the roll at the time of the union, and it is in order to guarantee their vested rights, because, as was pointed out by Rev. Mr. Campbell, the Fund has been considerably depleted by losses owing to the failure of the Commercial and Consolidated Banks, and there is barely enough now to pay the commuting ministers out of the revenues. To divide it up as proposed would simply be to destroy the rights of a great many men. So it is intended to keep this guarantee fund until all vested rights have ceased.

Hon. Mr. POWER—Do you understand from the judgment of the Privy Council that they throw out any suggestion as to the proper course to be adopted?

Mr. MORRIS—I am very glad the honorable gentleman has mentioned that point. The Privy Council decided that the Quebec Parliament had not power to pass this Act, and that it came within the functions of the Dominion Parliament. The judgment then goes on to say :—

“ Unless the Dominion Parliament intervene, there will be ample opportunity for new and protracted litigation.”

Now we come to you, and we say : Give us that legislation which, it seems, the Local Legislatures had no right to give, and on the faith of which the Church has been acting for the last seven years. The Privy Council, I am satisfied, from the terms of their judgment, meant nothing else than to say that what the Local Legislature could not do, the Dominion Parliament can do. Now we come to you and we say : Intervene and pass these bills.

Hon. Mr. ODELL—I want you to explain more clearly that point with regard to the right of the majority to rule in this matter, which you seemed to gather from the judgment of the Privy Council.

Mr. MORRIS—The judgment says :—

“ The Respondents were therefore justified in referring to the minutes of the Synod from 1831 to 1875, for the purpose of showing the extent of the power vested in majorities by the Constitution of the Church. The minutes, which were founded upon by Counsel for the Respondents, afford ample evidence to the effect that, in all matters which the Synod was competent to deal with and determine, the will of the majority as expressed by their vote was binding upon every member of the Synod, a proposition which the Appellant did not dispute.”

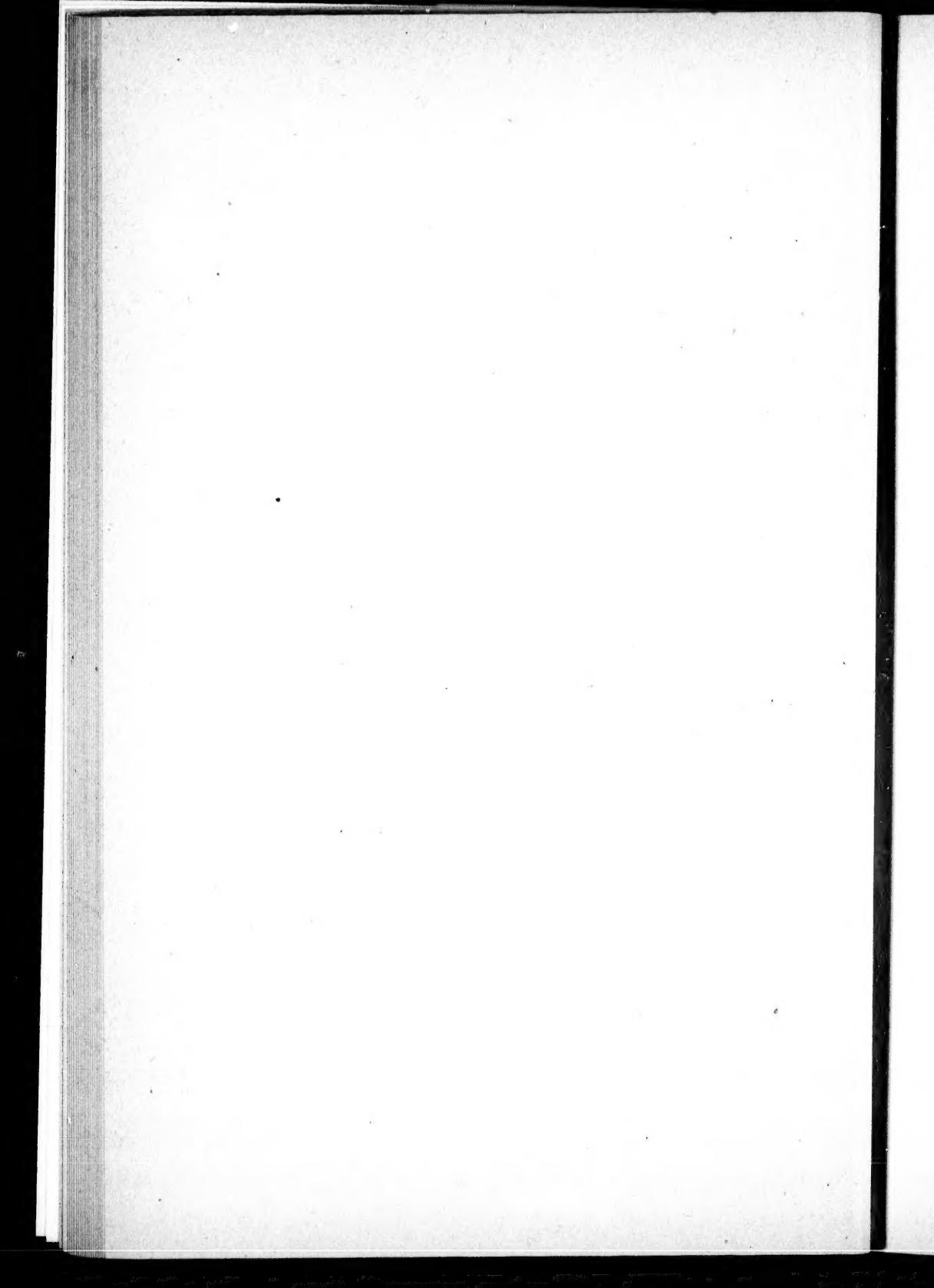
Hon. Mr. ODELL—Of course, if they were not competent their act would be illegal. Is there any further qualification ?

Mr. MORRIS—No, I do not think there is.

Hon. Mr. HAYTHORNE—Did you not say their remedy was to return.

Mr. MORRIS—That was a quotation from a Scotch case, which said that if they were not satisfied their remedy was to withdraw. I have shown that this Church acted constitutionally, and did not lose its identity, as I proved by the case of the Wesleyan Church Trustees. I also cited from the Scotch law to show that the Synod, as a voluntary association, had a perfect right to change its name. If it is still the same Church, these men who remained behind surely cannot be that Church. They may form themselves into a new Church, and they may even, as a voluntary association, call themselves by the old name, but it does not follow that they are the old Church, or that they have a right to ask this Parliament to incorporate them as such.

Gentlemen, thanking you for the patience and interest with which you have listened to my remarks, I once more ask you, in the words of the Privy Council, to "intervene." Give us the necessary legislation, and thus prevent "new and protracted litigation."



APPENDIX.

By request of the Synod of "The Presbyterian Church of Canada in connection with the Church of Scotland," the late Hon. Wm. Morris went to England, and there urged, "at the foot of the Throne," the claims of the Church to participate in the Clergy Reserves.

Both he and the Church to which he belonged were much broader and more liberal in their views, in those early days, than are now the champions of the minority who have so stubbornly fought this battle against union.

Our Church, not puffed up with the narrow view, that it was entitled to a share, only because it was in connection with the Church of Scotland, sought to forward the rights of all other Protestants in Canada equally with its own, as appears from its petition to the "King's Most Excellent Majesty, of date 13th June, 1831, commencing : "The claim of the Church of Scotland and of *all natives* of that portion of your Majesty's dominion, is founded upon the Act of Union between the two Kingdoms;" and as also appears by the petition of the United Presbytery of Upper Canada (another body of Presbyterians) to the Right Hon. Sir George Murray, his Majesty's principal Secretary of State for the Colonies, of date the 1st of September, 1830, as follows :—

"A few years ago the ministers in this country in connection with the Church of Scotland, who are much less numerous than your petitioners requested your petitioners to join them in an application to His Majesty's

Government for pecuniary assistance. They did so, and the signatures of their numerous congregations were attached to those petitions, as well as money forwarded to assist in sending home an agent to represent the Presbyterian claims in general.

In a letter of 1st July 1838, addressed to the Very Rev. Principal Macfarlan and the Rev. Dr. Burns, the Hon. Wm. Morris wrote :—

“A very general opinion prevails here, as well on the part of many influential ministers and members of our Church, as among numerous classes of other denominations; that composed as is the population of Upper Canada, it would not only be highly inexpedient but positively unjust, were the Government to clothe either or both of the national establishments with exclusive spiritual powers and advantages, or to confer in like manner the whole of the clergy lands. There are other Protestant Communities, particularly the Methodists, who have done much to meliorate the religious destitution of the Colony, and at a time, too, when few other clergymen were in the Country. It would, therefore, seem exceedingly selfish were we, when advocating our constitutional claims and rights, to deny to our fellow christians and neighbours that countenance and support from the Government, the deprivation of which has caused us so long and so justly to complain ”

Another quotation from the same letter is as follows :—

“I have never been able to perceive that the powers of an establishment such as our Church enjoys in Scotland, could benefit that branch of it which exists in the Canadas, even if there were no jealousies and opposition in the way. Endowment, to secure the decent and permanent support of public worship is all we ought to desire, and endowment only to a limited extent.

“All we require is a moderate and limited endowment, with legal corporate powers, to enable lay members of the Church, as trustees (not Presbyteries and Kirk Sessions), to hold and manage the property for the benefit of the Clergy; and this is as necessary for other Churches as for ours, and will readily be granted by the Legislature whenever asked.”

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